Mr. Khong Kok Yat, in reply, argued that O. 19 r. 4 had no application and that it was sufficient compliance with the Rules of the Supreme Court if the endorsement was signed by the plaintiff or his solicitor.

It is, in my opinion, relevant to note at this stage that the writ was a simple form of writ under O. 2 r. 1 with a statement of the nature of the claim endorsed and not a specially endorsed writ pursuant to O. 3 r. 6, whereas the writ dealt with by Mr. Justice Syed Sheh Barakbah in Civil Suit No. 9/59[1] was such a specially endorsed writ.

In Civil Suit No. 9/59[1] Mr. Justice Syed Sheh Barakbah relied upon the decision of the Irish Court of Appeal in *Cassidy & Co.* v. *M'Aloon,*[2] as reported in the 1957 Annual Practice, page 18. This report is not available to me but it is obviously based upon an interpretation of the last sentence of O. 19 r. 4, the applicability of which depends upon whether or not the endorsement is a pleading. This question came before the Court of Appeal in *Anlaby & Ors.* v. *Praetorius,*[3] where Fry L.J., said at page 768:—

"We have, therefore, to consider whether a statement of claim was delivered in this case. If it was not, the time for delivering the defence ran from January 26, and the judgment was regular. I am of opinion that a statement of claim was delivered by the plaintiff when the writ was served on the defendant. Order xx, r. 1, I think, determines the point. It is: 'Where the writ is specially indorsed under Order III, r. 6' (which was the case herein), 'no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim.' The words 'no further statement of claim shall be delivered,' imply that the indorsement is a statement of claim, and the succeeding words make it still more clear by providing that the indorsement 'shall be deemed to be the statement of claim.' I am clearly of the opinion that the indorsement on the writ was a statement of claim, and, therefore, that rule 6 of Order XXI applied to the case."

With this statement of the law, Lopes L.J., agreed, at p. 770.

In the case before me, as was pointed out by Mr. Khong Kok Yat in his reply, the writ was a simple one issued under O. 2 r. 1 with an endorsement containing a statement of the nature of the claim made. In my opinion, the only interpretation to be placed upon O. 19 r. 4, read in conjunction with the remainder of the Order and the other Orders in the Rules of the Supreme Court, 1957, is that it applies only to pleadings. It has been held in *Murray* v. *Stephenson,*[4] that a writ is not a pleading. It should also be noted, as pointed out by Mr. Khong Kok Yat, that in the case before me the plaintiff has filed a separate Statement of Claim which complies with O. 19 r. 4. The writ with an endorsement of the nature of the claim complies, in his submission, with O. 3 r. 1, which latter rule differs from the English equivalent in that it has in addition "and shall be signed by the plaintiff or his solicitors." It is relevant to note that the wording of rule 1 differs from the relevant part of O. 19 r. 4, which latter permits signature by a party only if he sues or defends in person. I am of the opinion that the writ issued in this case is not in breach of O. 19 r. 4 and complies with the Rules of the Supreme Court. Although the defendant, in his supporting affidavit, alleges that the Statement of Claim ought to have been signed by the plaintiff's solicitors whereas in fact it purports to be signed by the plaintiff, there is nothing on the writ itself which refers to the endorsement as a Statement of Claim. In my opinion, the decision of the Irish Court of Appeal and that of Mr. Justice Syed Sheh Barakbah in Civil Suit No. 9/59[1] are clearly distinguishable and not applicable to the writ before me.

The application is, therefore, dismissed. Costs to the plaintiff as taxed by the Senior Assistant Registrar.

Application dismissed.

Solicitors: *Khong & Son; Gibb & Co.*

CHONG FONG KOOI
v. KONG GIM HEM (m.w.)

[C. A. (Thomson C.J., Good and Smith JJ.) March 10, 1959]

[Penang — F.M. Civil Appeal No. 52 of 1958]

Landlord and Tenant — Sub-tenancy — Arrears of rent — Rent "lawfully due" as distinct from stipulated rent — Apportionment of rent — Subsequent order of Rent Board fixing appropriate rent — Not retrospective — Control of Rent Ordinance, 1956, ss.8, 12, 15 and 18.

The tenant in this case sublet a portion of the premises in question at an agreed rent of $60 a month while she herself paid a monthly rent of $63.25. The sub-tenant for a time regularly paid the stipulated rent, but at the beginning of September 1957 he was in arrears with three months' rent. The tenant thereupon terminated the sub-tenancy by giving notice to quit on September 4, refused tenders of rent that were made thereafter and on November 13 commenced proceedings asking for possession, alleging that the sub-tenant had lost the protection of the Control of Rent Ordinance on September 4 when "rent lawfully due" had been in arrear for upwards of 14 days. In the course of the proceedings before the Sessions Court the matter was referred to the Rent Board and the Board then determined the appropriate rent to be $53.80.

Held: (1) rent "lawfully due" under the Control of Rent Ordinance means rent which is not forbidden by the terms of the Ordinance itself;

(2) by section 15 of the Ordinance where there has been a sub-letting of premises the maximum recoverable rent of the portion sub-let may either be an amount determined by the Rent Board under section 8 or section 16 or, where there has been no such determination then it is an amount arrived at in accordance with a formula laid down by section 15(b) — in this case it was agreed it would be $8.69;

(3) as the Rent Board has no power to make any order relating to the amount of rent retrospective, the recoverable rent prior to the Board's order was the amount arrived at by operation of the formula laid down by section 15(b), and is the only rent "lawfully due";

(4) applying that principle to the present case, the tenant as on September 4, had since the commencement of the Ordinance paid by way of rent a sum very much in excess of the maximum total amounts of rent recoverable under the provisions of the Ordinance. Therefore on that date rent lawfully due as distinct from stipulated rent was not in arrears for 14 days or indeed in arrears at all, and it follows that he was still entitled to the protection of the Ordinance.

Cases referred to:—

(1) *L.D.A. Labrooy & Ors.* v. *S. M. Sharma* [1951] M.L.J. 127.
(2) *Ahmad & Sons* v. *Kaliappan* [1956] M.L.J. 1.
(3) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.
(4) *Woon Onn* v. *Tan Yee Gek* [1950] M.L.J. 231.

COURT OF APPEAL.

Appeal from the decision of Rigby J. reported at p. 75 *supra*.

Lim Cheng Ean for the appellant.

M. Abraham for the respondent.

Thomson C.J. (delivering oral judgment): This appeal raises a number of questions of some interest arising from the Control of Rent Ordinance, 1956, which with effect from the 1st day of July, 1956, replaced the 1948 Ordinance and the full effects of which have, perhaps not been wholly appreciated. For myself, on the view I have formed, I regret to say I do not find it necessary to deal with all the points which have arisen.

The appeal is from a decision of the High Court dismissing an appeal from a decision of the Sessions Court at Georgetown.

The plaintiff in the original proceedings was the tenant of certain premises at No. 521, Penang Road, Penang, which she held on a monthly tenancy at a rent of $63.25 a month. At some time, I do not think the exact date is material but it was prior to 1st July, 1956, the defendant became sub-tenant of a portion of the premises at an agreed rent of $60 a month. There was an additional payment of $10 for some sort of licence to use portions of the premises not comprised in the sub-tenancy, but we are not concerned with that part of the transaction here. For a time this stipulated rent, the agreed amount of $60, was regularly paid. Then the sub-tenant fell in arrears and at the beginning of September, 1957, there was three months' rent at the rate of $60 a month which had not been paid, that is for the months of June, July and August, 1957. Thereupon the tenant terminated the contractual sub-tenancy by giving notice to quit on 4th September, 1957, refused tenders of rent that were made thereafter and on 13th November, 1957, commenced proceedings asking for possession.

The premises were rent controlled and the ground on which it was alleged the sub-tenant had lost the protection of the Control of Rent Ordinance was that on 4th September, 1957, rent lawfully due had been in arrear for upwards of 14 days. For myself I would express no opinion one way or another on the question of whether or not the 4th September, 1957, that is the date of service of notice to quit, was the material date. It certainly would have been the material date for the purposes of the old Ordinance, but in my view the question of whether or not it was the material date for the purpose of the existing Ordinance does not fall to be decided in the present proceedings and will have to engage the attention of the Court on some future occasion. I say that because the words with which for myself I am concerned are the words "lawfully due".

Section 12 of the new Ordinance says that no order can be had for possession except in one of a number of stated cases one of which is "where rent lawfully due has been in arrear for 14 days or upwards".

Here it is abundantly clear that on 4th September, 1957, about $180 of rent was due and payable by virtue of the contract of tenancy and that that amount had been in arrear for over 14 days. The question, however is, was that rent lawfully due on 4th September? These words "lawfully due" occur in a statute dealing with rent and on the ordinary canons of construction it would seem that nothing can be said to be lawfully due in the way of rent if it is forbidden by the terms of the statute itself.

That brings me to a consideration of sections 15, 16, 17 and 18 of the new Ordinance which are new provisions in our legislation and which materially affect the previously existing position as between tenants and sub-tenants. Section 15 says that where there has been a sub-letting of premises the maximum recoverable rent of the portions sub-let, by which is meant the maximum rent which can be recovered, is one of two figures. It may be an amount determined by the Rent Board under section 8 or section 16 or, where there has been no such determination by the Rent Board, then it is an amount arrived at in accordance with a formula laid down by section 15(b) which, it is agreed in the present case, would be $8.69 a month. There has in fact been a determination by the Rent Board which supersedes that figure of $8.69 a month but the determination was not made until in the course of the Sessions Court proceedings the learned President by virtue of the powers given to him by section 17 referred the matter to the Rent Board and the Board then determined the appropriate rent to be $53.80.

That, however, only became the recoverable rent from the date of the Rent Board's order fixing the amount. It has been held on two occasions that a Rent Board has no power to make any order relating to the amount of rent retrospective. That was first decided by our late brother Hastings in the case of *L. D. A. Labrooy & ors.* v. *S. M. Sharma*(1) and was followed by myself in the case of *Ahmad & Sons* v. *Kaliappan*(2) and we see no reason to dissent from these decisions.

The position was, therefore, that prior to the date of the Rent Board's order fixing the recoverable rent at $53.80 a month there was no order of the Rent Board fixing the recoverable rent and therefore the recoverable rent by reason of section 15 was the amount arrived at by operation of the formula, that is to say $8.69 a month.

In the case of *Annamalai Chettiar* v. *Yeoh Kee Tin*[3] this Court referred to and did not dissent from the decision in *Woon Onn* v. *Tan Yee Gek*[4] where it was held that for the purpose of ascertaining whether a tenant was in arrears with rent lawfully due any rent paid in excess of the standard rent under the 1948 Ordinance could be set off against the standard rent due. For myself I can see in this connection no distinction in principle between standard rent under the 1948 Ordinance and recoverable rent under the new Ordinance. They are both, so to speak, statutory rents and so it can only be said that rent lawfully due is in arrears when what has in fact been paid is less than the law says is recoverable.

Applying that principle to the present case it is very clear that on 4th September, 1957, the present appellant had since the commencement of the Ordinance paid by way of rent a sum very much in excess — about $500 in excess — of the maximum total amounts of rent recoverable under the provisions of the Ordinance. It follows, therefore, that on 4th September, 1957, if that was the material date, rent lawfully due as distinct from stipulated rent was not in arrears for 14 days or indeed in arrears at all, and it also follows that the appellant, the sub-tenant, was still entitled to the protection of the Control of Rent Ordinance. I should add that no other result would follow if any other date were taken as the material date, but I have not found it necessary to deal with the point because the whole case for the respondent has been conducted on the basis that the 4th September, 1957, is the appropriate date. The question of what is the material date will have to be litigated on some future occasion.

There remains the question of the counterclaim, because originally the defendant counterclaimed for the amount overpaid which of course she was entitled to do by reason of section 3(4) of the Ordinance. Clearly on the basis of what I have said the appellant is entitled to something on the counterclaim. She is entitled to the difference between on the one hand what in fact she paid from the commencement of the Ordinance down to the commencement of the present proceedings and on the other hand what she ought to have paid. That amount can be ascertained by agreement between the parties. If the parties are unable to agree on the amount, it will have to be ascertained by the Registrar on a formal enquiry.

I would, then, allow the appeal, set aside the order for possession and give judgment for the appellant on the counterclaim for an amount to be agreed between all the parties or in default of agreement to be settled by the Registrar on enquiry. The appellant should have her costs of all proceedings here and below and of course she is entitled to have paid out her deposit of $500.

Good J. and **Smith J.** concurred.

Appeal allowed.

AD'AT BIN TAIB v. PUBLIC PROSECUTOR

[A. Cr. J. (Neal J.) August 24, 1959]

[Ipoh — Perak Miscellaneous Application No. 20 of 1959]

Criminal Law and Procedure — Bail — Criminal Procedure Code (Cap. 6), s.388(i) — Criminal Justice Ordinance, 1953, s.2(1) — Effect of — Charging of an offence — Reasonable grounds for believing guilt.

There is a wide distinction between the charging of an offence and of there being reasonable grounds for believing guilt. It may well be that in the initial stages of a criminal prosecution the fact that the Public Prosecutor has elected to charge a man with an offence coming within the proviso of section 388(i) of the Criminal Procedure Code (Cap. 6) may provide *prima facie* evidence of such reasonable grounds, but the law still remains that there must be reasonable grounds for believing the guilt.

R. v. *Chan Choon Weng & Ors.* (1) doubted.

The effect of the Criminal Justice Ordinance, 1953 in practice is that the only non-bailable offences are those punishable with death.

[**Editorial Note:** this case does not apply to Singapore as section 407(1) of the Criminal Procedure Code (Cap. 132) which corresponds to section 388(i) of the States Code uses the terms "imprisonment for life" instead of "penal servitude for life."]

Case referred to:—

(1) *R.* v. *Chan Choon Weng & Ors.* [1956] M.L.J. 81.

CRIMINAL REVISION.

S. A. Lingam for the applicant.

Raja Azlan Shah (Federal Counsel) for the respondent.

Neal J. (delivering oral judgment): This matter came before me by way of Criminal Revision. It had previously come before me on an application that the accused in Taiping Magistrate's Court Criminal Case No. 1080 of 1959 be admitted to bail by this Court. I declined to make any such order and pointed out that the appropriate procedure was an application for bail to the Magistrate and his refusal for granting could be the subject of appeal or revision by this Court. Accordingly counsel addressed the Magistrate in writing applying for bail and in support of his application for bail were tendered copies of affidavits filed in this Court wherein the applicant stated facts which threw some doubt as to whether or not he has been guilty of an offence under section 326 of the Penal Code. Instead of dealing with that written application as a fresh application for bail upon the grounds therein stated, the Magistrate in his reply said that he had refused bail once and he stated he had based his refusal on the statement of the law on section 388 of the Criminal Procedure Code as interpreted by Mr. Justice Spencer Wilkinson in *R.* v. *Chan Choon Weng & Ors.*,(1) where, in dealing with section 388(i) of the Criminal Procedure Code, that learned Judge said:—

"In my opinion there is no doubt in law that where an accused is charged with an offence punishable with life imprisonment a Magistrate has no power under section 416(1) to grant bail whether that offence is or is not also punishable with death."

Section 416(1) of the Straits Code is similar in terms with our section 388(i). It will be noted that the terms used in the Criminal Procedure